

The European Digital Single Market Strategy: why we should keep an eye on it

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media LAWS

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The need to better exploit the opportunities offered by the digital technologies has been identified by Mr Junker from the very beginning of his political adventure as the head of the EU Commission as a priority to be tackled at European level. After having been elected as Commission President, Mr Junker confirmed his commitment to this goal by affirming that *“If we are successful in implementing a real digital single market, we can generate €250 billion of additional growth in Europe. We will do it”*^[1].

In May 2015, a roadmap for completing the Digital Single Market Strategy (DSMS) was laid down by the Commission^[2]. The roadmap puts great emphasis on:

- granting better access for consumers and businesses to digital goods and services across Europe,
- creating the right conditions for digital networks and services to flourish,
- maximizing the growth potential of the digital economy.

Simultaneously, the DSMS was formalized under a Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions^[3]. A fit for purpose regulatory environment for platforms and intermediaries was included in the to-do-list of the EU regulator as a priority.

On 10 May 2017, the Commission published a mid-term review of the initiatives undertaken under the umbrella of the DSMS^[4]. With European Parliament elections coming up next year, the path through the achievement of the DSMS seem far from its conclusion. Nonetheless, the regulator is struggling to achieve the DSMS goals.

Having said the above, question is: why is the DSMS so important? What kind of impact (if any) could it have on the economics? In brief: why should we care about it? Answer is: we should care because the DSMS effects could go far beyond the digital market. Just by way of example:

- as the achievement of a fairer and more uniform environment is crucial to achieve the goals of the DSMS, we can expect material changes to EU audiovisual rules. In this respect, on 26 April 2018 the European Parliament, the Council and the Commission have reached a preliminary political agreement on the revised rules that will apply to the audiovisual media across Europe^[5],
- given the importance of a common legal framework on electronic communications, changes to the way we approach this matter shall presumably come from the adoption of a European Electronic Communications Code, which indeed is currently under discussion,
- the implementation of the DSMS will require the adoption of new rules common at EU level such as new copyright rules and initiatives to reduce the administrative burden on businesses arising from different VAT regimes. The impact of these measures shall presumably go beyond the digital market and impact

also on traditional economic sectors,

- with online platforms playing a key-role in the context of the digital economy and of the DSMS, the Commission will assess their role and hopefully set up a regulatory environment which can help EU native platforms to flourish and scale up. However, given the continuous growth of the app economy's impact on our society – both in terms of social and monetary impact – any regulatory development in connection thereto shall presumably result in a number of consequences. By way of example: market-access regulations could potentially play a key-role in mitigating the disruptive potential which online platforms (often non-European) have so far carried out into traditional sectors of the EU economy; at the same time, the need to address and govern such potential shall be balanced with the need to take into due account the important contribute online platforms could bring to EU global political leadership[6],
- the DSMS will also have a material impact on security matters, as the will to fight against hate speech online and terrorism plays a key-role in the overall strategy,
- also consumers' protection is expected to be materially impacted by the progressive implementation of the DSM Strategy: indeed, it has been highlighted that *“rather than extending the lex specialis currently applicable to e-communications operators to OTTs, modernised, horizontal consumer protection legislation should be adopted”*[7],
- in addition to the above, the DSMS could potentially impact on the “real economy” in a number of further ways: from the major investments which are to be expected as the strategy to improve the digital connection networks takes shape[8] to the role the e-commerce directly plays in boosting the real estate logistics market,
- to conclude, there is an increasing level of expectations with respect to role the free flow of non-personal data will play in modernizing public services (a good example is digital health services).

The DSM Strategy has already resulted in what follows:

- mobile roaming charges have been abolished in June 2017,
- the GDPR – which is not actually integral part of the DSMS but nonetheless plays a key-role in this respect – has just entered into force (on 25 May 2018),
- cross-border portability of online content services has been unlocked since the portability regulation became applicable in all EU Member States on 1 April 2018.

In a view of pursuing the DSMS, the Commission has already delivered:

- legislative proposals for a reform of the copyright regime,
- legislative proposals to reform the current telecoms rules. More in particular, 44 initiatives have been put forward, including legislative initiatives on key parts of the strategy, such as spectrum coordination,
- proposals for the review of the Audiovisual Media Services Directive,
- proposals for the review of the e-Privacy Directive,
- proposals for a Regulation on ENISA, the “**EU Cybersecurity Agency**”, and on Information and Communication Technology cybersecurity certification (“Cybersecurity Act”).

In a nutshell, material changes to the current legislative framework are hence to be expected as a consequence of the implementation of the DSMS and such changes shall presumably impact not only on the digital market, but also on traditional economic sectors: that is why its future developments are worth being monitored.

[1] The political guidelines the DSM strategy is based on can be downloaded here https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf.

[2] https://ec.europa.eu/commission/publications/roadmap-completing-digital-single-market_en.

[3] The full text of the Communication can be downloaded here <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

[4] <https://ec.europa.eu/digital-single-market/en/news/digital-single-market-mid-term-review>.

[5] More information can be retrieved here <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd>.

[6] Interestingly, it has been highlighted that “*Testimony to the new political power of internet platforms can be seen in actions such as the recent decision of the Danish government to appoint ambassadors to internet platforms or in the way Google or Amazon are trying to shape the outcome of the TISA-negotiations. If the EU aspires to retain its standing as a global power in the setting of rules and standards in transnational commerce, it will have to do much more to nurture a European brand of global digital platforms*” (Paul-Jasper Dittrich, *Balancing Ambition and Pragmatism for the Digital Single Market*, downloadable at <https://institutdelors.eu/wp-content/uploads/2018/01/balancingambitionandpragmatismforthedigitalsinglemarket-dittrich-jdib-sept2017.pdf>).

[7] https://www.ceps.eu/system/files/IEForum42017_1.pdf.

[8] In this respect it is worth noting that as part of the next long-term EU budget 2021-2027, the European Commission has recently proposed to renew the ‘Connecting Europe Facility’, with €42.3 billion to support investments in the European infrastructure networks for transport (€30.6 billion), energy (€8.7 billion) and digital (€3 billion): see http://europa.eu/rapid/press-release_IP-18-4029_en.htm. In addition to that, on 6 June 2018 the European Commission has proposed to create the first ever Digital Europe programme and invest €9.2 billion to align the next long-term EU budget 2021-2027 with increasing digital challenges: see <https://ec.europa.eu/digital-single-market/en/news/eu-budget-commission-proposes-eu92-billion-investment-first-ever-digital-programme>.

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